UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,850	06/25/2001	Kiran Bellare	ORCL5697(OID-2000-056-01)	9434

53156 7590 12/11/2008

YOUNG LAW FIRM, P.C.
4370 ALPINE RD.
STE. 106
PORTOLA VALLEY, CA 94028

EXAMINER	
BEKERMAN, MICHAEL	
ART UNIT	PAPER NUMBER
3622	

MAIL DATE	DELIVERY MODE
12/11/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/888,850	BELLARE ET AL.	
	Examiner	Art Unit	
	MICHAEL BEKERMAN	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 August 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15,17-19,22-42,44-61,63-65 and 68-77* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15,17-19,22-42,44-61,63-65 and 68-77* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application.
6) ☐ Other: _____.

DETAILED ACTION

This action is responsive to papers filed on 8/8/2008.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. **Claims 1 and 47 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.** The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claims 1 and 47, these claims recite the limitation "exposing only the selected ones of the plurality of compensation plans to the potential affiliate". This implies that the potential affiliate is not exposed to the un-selected plans, which is not supported by the specification. Any negative limitation or exclusionary proviso must have basis in the original disclosure. The mere absence of a positive recitation is not basis for an exclusion. See MPEP 2173.05(i).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1, 5-9, 11, 12, 15, 26, 27, 29, 33-37, 39, 40, 47, 51-55, 57, 58, 61, 72, 73, and 75-77 are rejected under 35 U.S.C. 102(b) as being anticipated by Bezos (U.S. Patent No. 6,029,141).** Bezos teaches a system and method of registering for an affiliate program that teaches all of the limitations recited in the above claims.

Regarding claims 1, 29, 47, and 75-77, Bezos teaches defining by the merchant a plurality of compensation plans (catalog of different products that can be marketed by an affiliate), receiving an application containing sales and marketing information from a potential affiliate (Figures 3b and 3c, Column 2, Lines 25-32, Column 3, Lines 10-19, Column 6, Lines 38-40, and Column 9, Lines 14-21), evaluating the application via text-scanning code (Column 2, Lines 33-38), selecting and exposing specific products IDs (compensation plans) from the catalog of products to the potential affiliate (Bezos teaches sending the initial email having after the application is filed to the potential affiliate, the email having unique product IDs. Thus, these IDs must be garnered from the information submitted in the application, whether it be a specific request in the application or simply a description of the website. Therefore, a profile based on the application is inherently determined to categorize and submit such information) (Column 10, Lines 60-65), and upon the potential affiliate placing the

referral link (thus the potential affiliate becomes an affiliate, when consumers start linking through the affiliate webpage for a particular product, this is a notification of selection and is the equivalent of accepting of a selection of the affiliate), measuring sales traffic to the merchant website from the affiliate site to determine commission (Column 18, Appendix B). If the product IDs are sent in the initial mail response, then only those compensation plans are exposed. According to Bezos, however, the affiliate has the option of browsing as well.

Regarding claims 5, 33, and 51, Bezos teaches the compensation due the affiliate varies according to the type of product sold (Column 7, lines 41-45). Examiner interprets each product to be a separate category.

Regarding claims 6, 34, and 52, Bezos teaches traffic to the merchant site as being measured according to at least one predetermined measure, the predetermined measure being generated revenue and a number of orders (Column 18, Appendix B).

Regarding claims 7, 8, 35, 36, 53, and 54, Bezos teaches the compensation due to the affiliate as being determined according to a fixed percentage of a predetermined measure (Column 13, Lines 3-4).

Regarding claims 9, 37, and 55, should a user accept the agreement to participate in the affiliate program (Figure 3c), this indicates that the affiliate is content with the type of payment.

Regarding claims 11, 12, 39, 40, 57, and 58, Bezos teaches providing store credit as compensation for referrals (Column 12, Lines 44-48).

Regarding claims 15 and 61, Bezos teaches measuring being performed between January 12th and January 18th (Column 18, Appendix B). This does not appear to take into account an accounting calendar.

Regarding claims 26 and 72, Bezos teaches a step of setting up at least one link to the merchant web site on the affiliate site, the at least one link being associated with the at least one selected compensation plan selected by the affiliate (Column 17, Appendix A).

Regarding claims 27 and 73, Bezos teaches compensation plans that implement a sales strategy of the merchant (the implementation of a commission program based on sales or a particular product constitutes a sales strategy) (Column 9, Lines 14-21).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. **Claims 2-4, 10, 13, 14, 22, 30-32, 38, 48-50, 56, 59, 60, and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bezos (U.S. Patent No. 6,029,141) in view of Koppelman (U.S. Pub. No. 2004/0039640).**

Regarding claims 2, 30, and 48, while Bezos teaches different types of compensation for an affiliate (Column 7, Lines 30-36, Column 7, Lines 46-51, Column 11, Lines 12-15, and Column 12, Lines 44-48), Bezos doesn't appear to specify a compensation plan in which the compensation due the affiliate varies according to a predetermined date interval. Koppelman teaches a compensation plan in which sales targets are attained during a defined time period (Paragraph 0005, Sentence 1). A defined time period is a predetermined date interval. It would have been obvious to one having ordinary skill in the art at the time the invention was made to implement the compensation plan of Koppelman within the system of Bezos. This would allow the affiliate another different compensation plan from which to choose.

Regarding claims 3, 4, 31, 32, 49, and 50, while Bezos teaches different types of compensation for an affiliate (Column 7, Lines 30-36, Column 7, Lines 46-51, Column 11, Lines 12-15, and Column 12, Lines 44-48), Bezos doesn't appear to specify a compensation plan with any threshold quantity to be reached. Koppelman teaches a compensation plan in which a commission is earned according to a first percentage rate of sales until a threshold quantity is reached (number of sales), and then a commission is earned according to a second percentage rate (Paragraph 0005, Sentence 2). Koppelman also teaches the second percentage rate as being applied retroactively to the sales prior to reaching the first threshold quantity (Paragraph 0133, Sentence 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to implement the compensation plan of Koppelman within the system of

Bezos. This would allow the affiliate another different compensation plan from which to choose.

Regarding claims 10, 38, and 56, while Bezos teaches different types of compensation for an affiliate (Column 7, Lines 30-36, Column 7, Lines 46-51, Column 11, Lines 12-15, and Column 12, Lines 44-48), Bezos doesn't appear to specify a compensation plan using a bonus system. Koppelman teaches a compensation system in which commissions include a bonus after a threshold quantity of a predetermined measure is reached (Paragraph 0005, Sentence 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to implement the compensation plan of Koppelman within the system of Bezos. This would allow the affiliate another different compensation plan from which to choose.

Regarding claims 13, 14, 59, and 60, Bezos doesn't appear to specify the assigning of a performance goal to the affiliate. Koppelman teaches a compensation plan including the assigning of a performance goal (quota) to an affiliate, the measuring of that affiliates performance, and the comparing of the affiliate's performance to the performance goal assigned the affiliate (Paragraph 0082). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the performance measuring system of Koppelman into the method of Bezos. This would allow merchants to better utilize their resources by only paying affiliates with better performance rates.

Regarding claims 22 and 68, Bezos doesn't appear to specify profiling affiliates according to traffic. Koppelman teaches a compensation system with a step of profiling

sales representatives (affiliates) based on the amount of sales (traffic) they attain (Paragraph 0098). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include Koppelman's step of profiling to the system of Bezos. This would give merchants a system to easily remember which affiliate sites make them the most money.

4. **Claims 17, 41, and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bezos (U.S. Patent No. 6,029,141) in view of Lipin (U.S. Pub. No. 2004/0225558).**

Regarding claims 17, 41, and 63, Bezos does not appear to specify sub-affiliates. Lipin teaches a step of assigning at least one compensation plan to a sub-affiliate, the affiliate being further compensated based upon traffic to the merchant website originating from a website of the sub-affiliate (Paragraphs 0033 and 0034). It would have been obvious to one having ordinary skill in the art at the time the invention was made to offer a sub-affiliate program to allow the affiliate to make more money while involving more affiliates.

5. **Claims 18, 19, 42, 64, and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bezos (U.S. Patent No. 6,029,141) in view of Kahn (U.S. Patent No. 6,401,079).**

Regarding claims 18, 19, 42, 64, and 65, Bezos doesn't appear to specify the merchant being able to select a pay calendar. Bezos also doesn't appear to specify the

adding of several affiliates to a pay group. Kahn teaches a payroll system in which the employer (merchant) assigns employees (affiliates) to a payroll group, and then assigning a pay cycle (calendar) to the group (Column 36, Lines 22, 23, and 53-56). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the payroll system of Kahn in the compensation method of Bezos. This would allow merchants to handle the payment for the affiliates in a more timely fashion.

6. **Claims 23, 44, and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bezos (U.S. Patent No. 6,029,141) in view of Barber (U.S. Patent No. 6,289,318).**

Regarding claims 23, 44, and 69, Bezos doesn't appear to specify the measuring of traffic to the merchant website that originates from a site other than the affiliate website, but whose first visit to the merchant website originated from the affiliate website. Barber teaches a commission model in which a participating merchant (affiliate) can get credit for traffic going to a paying merchant's website as long as they are apart of the stream of influence that swept the traffic to that paying merchant's website (the affiliate doesn't need to be the last site visited before the paying merchant receives the traffic) (Column 6, Lines 53-61). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the stream of influence system of Barber into the compensation method of Bezos. This would allow

affiliates to get credit for referring customers to the merchant website, even if the customer didn't go to the merchant website directly from the affiliate site.

7. **Claims 24, 25, 45, 46, 70, and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bezos (U.S. Patent No. 6,029,141) in view of Tarvydas (U.S. Pub. No. 2002/0038255).**

Regarding claims 24, 25, 45, 46, 70, and 71, while Bezos teaches the customer as providing information to the merchant such as authentication (customer ID) (Column 15, Lines 5-6) and payment information (Column 15, Lines 44-50, Bezos doesn't appear to specify the receiving of customer authentication information from an affiliate. Tarvydas teaches a shopping system in which the customer never has to enter the merchant's site to place the order. Instead, the customer authentication and payment information is sent to the merchant through the shopping site (affiliate) accessed by the customer (Paragraph 0011, Sentence 4 and Paragraph 0012, Sentence 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the customer authentication method of Tarvydas in the compensation system of Bezos. This would allow the merchant site easier access to customer information and it would also allow customers the ability to place orders more quickly.

8. **Claims 28 and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bezos (U.S. Patent No. 6,029,141) in view of Joao (U.S. Pub. No. 2001/0037205).**

Regarding claims 28 and 74, Bezos doesn't appear to specify a third party that maintains a plurality of mass affiliates compensated by compensation plans that differ from the defined plurality of compensation plans. Joao teaches an apparatus for effectuating an affiliated marketing relationship that acts as a third party and manages the financial accounts for content providers (affiliates) (Paragraph 0021, Sentence 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the third party affiliate managing apparatus of Joao in the system of Bezos. This would allow the accounts to be better kept and organized.

Response to Arguments

9. Applicant has cited numerous portions of the specification in an effort to show support for the limitation "exposing only selected ones". Applicant argues "Note the language 'only a predetermined subset of these may be appropriate for any given affiliate'. Naturally, only the predetermined subset of the compensation plans will be exposed (i.e. visible) to the affiliate as available choices". The issue here is that the word "only" means (1) the predetermined subset is exposed and (2) nothing outside of that subset is allowed to be exposed. Portion (2) is what constitutes the negative limitation. The sections of the specification cited by Applicant indicate that a certain number of plans might be the only plans applicable for the affiliate, but it never states that those plans are the only plans to be exposed, thus preventing the exposure of any other plans. Therefore, it is believed that while Applicant has support for exposing

selected ones, Examiner still believes that there is no support in the specification for the negative limitation "exposing only selected ones".

10. Applicant argues "The different products that can be marketed by an affiliate or a catalog thereof are not compensation plans...A listing of products does not define a compensation plan...The Office is not at liberty to redefine terms contrary to their common and well understood meaning". Examiner would like to point out that Applicant has provided no ordinary definition for the term "compensation plan". While the term "compensation" has a clear definition, and the term "plan" has a clear definition, no clear definition has been supplied for the term "compensation plan". Applicant also cites multiple sections of Bezos in which the term "compensation" is used, however this is beside the point, as Bezos never uses the term "compensation plan". Further, for Bezos to anticipate the current claims, the prior art does not need to use exactly the same language as Applicant. Regardless of this point, Applicant has apparently misunderstood the rejection. Examiner has made no attempt to redefine what Applicant appears to require from the term "compensation plan". Bezos teaches that there are numerous ways to determine a commission, including a percentage of a sale price. The items in the product catalog of Bezos each have different prices (as evidenced by the table in Appendix B at the bottom of Column 18). If an affiliate earns 10% back on a sale, then a $50 item will earn $5 while a $20 item will only earn $2. Therefore, based on which product(s) are chosen from the catalog, each different product does indeed represent a different way of being compensated, and therefore teach different compensation plans. Examiner would also like to direct Applicant to currently pending

claim 5 which backs up the Examiner's interpretation, as claim 5 recites that the compensation varies according to product "category".

11. Applicant argues "in Bezos, the enrolling associate is not disclosed to have the ability to select from among the exposed compensation plans. This shortcoming alone, is believed to be fatal to the Office's anticipatory rejections". On the contrary, as explained above, an enrolling associate is indeed able to select from different products having different prices. As explained above, this represents different forms of compensation, which is taken to be different compensation plans, and therefore potential affiliates do indeed get to select from exposed plans.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL BEKERMAN whose telephone number is (571)272-3256. The examiner can normally be reached on Monday - Friday, 7:30 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric W. Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/M. B./
Examiner, Art Unit 3622

/Eric W. Stamber/
Supervisory Patent Examiner, Art Unit 3622